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FISCAL IMPACT REPORT

SPONSOR Tsosie DATE TYPED 3/05/05 HB _____

SHORT TITLE Approval for Use of Certain Education Funds SB 1056

ANALYST Chabot

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Department of Indian Affairs (DIA)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 1056 amends Section 22-3-25 NMSA 1978 (State Equalization Guarantee—Definitions—Determination of Amount) for the purpose of requiring school districts that receive federal impact aid for students who reside on Indian reservations or other tribal land not expend the revenue until the use has been approved by the Indian Education Committee in the local school district.

Significant Issues

DFA assesses the bill seeks to expand the oversight of local district Indian Education Committees on the use of federal funds know as “impact aid” (Formerly called P.L. 874 funds, now produced through the provisions of Title 20, Section 7703 (b) USC). The state takes a credit of 75 percent of impact aid revenues flowing to local districts, except for special education and Indian set-aside funds) when calculating the State Equalization Guarantee (SEG). Of the remaining 25 percent, 20 percent is used for public school capital outlay projects and 5 percent for operational purposes. The National Education Association reports Federal Impact Aid Basic Support Pay-

ments to the state is \$84.9 million for 2005.

The bill empowers Indian Education Committees to oversee how the impact aid funds are spent. Currently 23 districts had staff designated as an Indian Education Contact but, DFA states "Information was not available on the number of districts that have an Indian Education Committee." However, it further points out "neither statute nor regulation currently recognizes the existence of local school district Indian Education Committees."

PED assesses that Section 22-23A-5(7) requires a "school district to obtain a signature of approval by the tribal governments or tribal government designees residing within the school district boundaries, verifying that the tribes agree to Indian education polices and procedures pursuant to federal requirements." In addition, federal regulation also prescribes procedures for school districts to obtain input and provide an opportunity for consultation with tribes regarding impact aid funds.

PED states the bill takes the requirement "one step further" by requiring Indian education committees to have approval of impact aid expenditures thereby giving the committees a veto power of school district budgets.

DIA states "several New Mexico Indian tribes and parents have expressed serious concerns that school districts are not spending Impact Aid funds appropriately or equitably among the schools within the district. For example, there was a recent case where the Gallup High School allegedly used Impact Aid funds to build a swimming pool in the City of Gallup, while other smaller public schools within the district, including many located on the Navajo reservation, did not receive a share of the Impact Aid funds to improve their dilapidated classroom facilities."

DIA further adds, "SB 1056 appears to address the alleged misuse of Federal Impact Aid funds by school districts. The proposed legislation does this by providing a safeguard, which is to require school districts to get approval from the Indian Education Committee before it expends Federal Impact Aid funds." The bill aligns itself with the requirements of the Impact Aid Laws, the Johnson O'Malley Act of 1934, and federal regulations.

The Superintendent of the Gallup-McKinley County Public Schools in written correspondence dated March 4, 2005 refutes the statement by DIA on the use of impact aid funds to build a swimming pool. The swimming pool is not at Gallup High School, but is 12 miles away located within walking distance of a junior and middle school servicing 1,900 students, 78 percent of whom are Native American, and it will be used to address PED's physical education standards. The city of Gallup paid 84 percent of the cost and the school district 16 percent. The letter states the 20 percent Capital Outlay Funds questioned by DIA were used for the following:

- \$750,000 Aquatic Center;
- \$1.2 million for debt services to pay for teacher housing built at the reservation schools;
- \$275,000 for gross receipts tax for construction and the Navajo Reservation tax;
- \$841,000 for computers district-wide, including reservation schools;
- \$750,000 total for artificial turf at two reservation high schools; and
- remaining dollars go for E-rate match for technology at all schools on and off the reservation.

FISCAL IMPLICATIONS

PED is unclear as to which federal impact aid funds require approval of the Indian education committee: the 75 percent which is part of the operational portion of impact aid funds received by a school district that is used by the state to calculate the state equalization guarantee; the 5 percent operational portion; the set aside portion; or the special education portion.

ADMINISTRATIVE IMPLICATIONS

PED will need to develop a mechanism to ensure approval is received prior to expenditure of impact aid funds. Districts will have to change procedures to allow for consultation with Indian Education Committees in establishing budgets.

RELATIONSHIP

PED identifies the following related statutes and Code of Federal Regulations (CFR)

- Section 22-23A-5-(7) NMSA 1978 requires a school district to obtain a signature of approval by the tribal governments or tribal government designees residing within the school district boundaries, verifying that the tribes agree to Indian education policies and procedures pursuant to federal requirements.
- Section 22-8-10 NMSA 1978 requires school districts to invite parental involvement and input in the budgetary process.
- 34 CFR Section 222.102 provides a remedy for tribes to file a complaint about a local school district's Indian policies and procedures.
- 34 CFR Section 222.94 requires the involvement of tribal officials and parents of Indian children in the planning and development of the local education authority's education programs and activities and spells out procedures on how districts can involve tribal officials and Indian parents.
- 34 CFR Section 222.95 provides for withholding of federal impact aid funds if it is determined that a school district's Indian policies and procedures have not been developed and implemented according to federal regulation. The review of a school district's Indian policies and procedures and subsequent determination of compliance is made by the Federal Director of the Impact Aid Program.

TECHNICAL ISSUES

PED recommends specifying which impact aid funds are covered by the legislation.

OTHER SUBSTANTIVE ISSUES

The Gallup-McKinley County Public Schools state the "Gallup McKinley County School District's Indian Education Committee has 37 member positions, many who live out in the reservation. This group is so large that it could make the distribution process unwieldy for the district and delay services for students. The members of this Committee are made up of:

- 33 from Navajo Reservation Chapter Houses;
- 2 from the City of Gallup; and
- 2 at-large student positions.

ALTERNATIVES

PED suggests amending Section 22-8-10 NMSA 1978 (Public School Finance Act) to include the involvement of the Indian Education Committee in a school district's budget process.

POSSIBLE QUESTIONS

1. Is the intent of this bill to recognize the existence of local school district Indian Education Committees?

GAC/yr